

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 11-Cr-30

ERNEST CLARK

Defendant.

RECOMMENDATION AND ORDER

_____ On December 13, 2011, the court held a hearing on the government's motion to set a trial date. Defendant Ernest Clark appeared pro se and with standby counsel, Attorney Mark Rosen. The government appeared by Assistant United States Attorney William Lipscomb. At the hearing, in addition to seeking an agreed-upon trial date, the court addressed the defendant's motion to disqualify this judge. The defendant sought such disqualification based on the court's alleged partiality and favoritism towards the prosecution. (Defendant's Motion to Disqualify at 1) (Docket #128). For the reasons stated on the record, the court denied the defendant's motion to disqualify. This order memorializes the court's oral order.

The defendant also orally moved to dismiss the indictment pursuant to Fed. R. Crim P. 48(b) and the Sixth Amendment to the United States Constitution for violating his right to a speedy trial. For the reasons stated at the hearing, the court stated it would recommend that the defendant's motion to dismiss be denied.

In addition, the issue of the defendant's DNA expert was discussed. By way of background, the defendant filed a motion to conduct a scientific examination of physical evidence, which the court ultimately granted on November 18, 2011. At that time, the court

authorized the defendant to engage a DNA expert for a total cost of \$1,200.00 after the appropriate authorization form was completed and approved by the court. The December 13, 2011, hearing, was continued to December 21, 2011. In addition to other matters, Attorney Rosen advised the court that he had spoken to Dr. Alan Friedman, a DNA expert to review the DNA material in this case and that his fee for such review is \$2,000.00.

By letter filed December 27, 2011, Attorney Rosen, on behalf of the defendant requested authorization for the payment of fees to Dr. Friedman in the total amount of \$2,000.00. The defendant's request will be granted. Standby counsel should complete an expert authorization form and submit it to the court on or before January 5, 2012.

NOW, THEREFORE, IT IS RECOMMENDED that United States District Judge J.P. Stadtmueller enter an order denying the defendant's motion to dismiss the indictment based on alleged violations of Fed. R. Crim. P. 48(b) and the Sixth Amendment.

IT IS ORDERED that the defendant's motion to disqualify this judge be and hereby is denied for the reasons stated on the record at the December 13, 2011, hearing. (Docket #128).

IT IS FURTHER ORDERED that the defendant is authorized to engage Dr. Alan Friedman, a DNA expert, to conduct a review of the DNA material in this case for a total cost of \$2,000.00, which includes the previous authorization for payment of \$1,200.00 for such expert. Standby counsel shall complete an expert authorization form and submit it to the court on or before **January 5, 2012**.

Your attention is directed to 28 U.S.C. § 636(b)(1)(A) and General Local Rule 72(c) (E.D. Wis.), whereby written objections to any order or recommendation herein or part thereof may be filed within fourteen days of service of this order. Objections are to be filed in accordance with the Eastern District of Wisconsin's electronic case filing procedures.

Courtesy paper copies of any objections shall be sent directly to the chambers of the district judge assigned to the case. Failure to file a timely objection with the district court shall result in a waiver of your right to appeal.

Dated at Milwaukee, Wisconsin, this 28th day of December, 2011.

BY THE COURT:

s/Patricia J. Gorence _____
PATRICIA J. GORENCE
United States Magistrate Judge